

BOARD OF REGISTERED NURSING
Agenda Item Summary

AGENDA ITEM: 8.1

DATE: July 25, 2012

ACTION REQUESTED: Positions on Bills of Interest to the Board, and any other Bills of Interest to the Board introduced during the 2011-2012 Legislative Session.

REQUESTED BY: Louise R. Bailey
Interim Executive Officer

BACKGROUND: Senate Bills
SB 122

NEXT STEP:

FISCAL IMPLICATION, IF ANY: None

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BOARD OF REGISTERED NURSING

Legislative Update

July 25, 2012

Bill Analysis

AUTHOR:	Price	BILL NUMBER:	SB 122
SPONSOR:	Price	BILL STATUS:	Assembly Appropriations
SUBJECT:	Healing Arts	DATE LAST AMENDED:	July 2, 2012

SUMMARY:

Existing law creates within the Department of Consumer Affairs the Board of Registered Nursing, and makes the board responsible for the licensure and regulation of registered nurses. Existing law requires the board to meet quarterly.

Existing law defines the term "approved school of nursing" and requires the board to approve and regulate registered nursing schools that are institutions of higher education or are affiliated with an institution of higher education, as specified. Existing law requires a school of nursing that is not affiliated with an institution of higher education to make an agreement with such an institution for purposes of awarding nursing degrees.

Existing law provides that it is unlawful for anyone to conduct a school of nursing unless the school has been approved by the board.

This bill would add and amend sections of the Business and Professions Code relating to healing arts.

ANALYSIS:

This bill would require meetings of the board to be held in northern and southern California.

This bill would delete the provisions requiring an agreement and would instead allow the board to approve a school of nursing that is affiliated with an institution of higher education, and that is subject to the requirements set forth in the California Private Postsecondary Education Act of 2009 to grant nursing degrees. The bill would specify that the term "approved school of nursing" includes an approved nursing program.

The bill would require the board to have a memorandum of understanding with the Bureau for Private Postsecondary Education to delineate the powers of the board and bureau, as specified.

The bill would authorize an institution of higher education or a private postsecondary school of nursing approved by the board to remit to the board for deposit in the Board of Registered Nursing Fund the following fees: The fee for approval of a school of nursing shall be five thousand dollars (\$5,000). The fee for continuing approval of a nursing program established after January 1, 2013, shall be three thousand five hundred dollars (\$3,500). The processing fee for authorization of a

substantive change to an approval of a school of nursing shall be five hundred dollars (\$500). Because the bill adds a new source of revenue to a continuously appropriated fund, the bill would make an appropriation.

This bill would authorize the board to issue cease and desist orders to a school of nursing that is not approved by the board and would require the board to notify the Bureau for Private Postsecondary Education and the office of the Attorney General of such a school. The bill would also provide that it is unprofessional conduct for any registered nurse to violate that provision.

Amended analysis of 1/4/12:

The bill as introduced 1/24/11 addressed *health care coverage: dependents*. This bill as amended now relates to *nursing*.

Amended analysis of 1/10/12:

The bill was amended to delete the provision requiring new nursing schools seeking board approval to be recognized or approved by an accrediting agency recognized by the United States Department of Education.

Amended analysis of 6/12/12:

The bill was amended to add amendments to the Business and Professions Code related to the Medical Board of California and the California Massage Therapy Council and is now *Healing Arts*.

Regarding nursing, the bill would allow the board to approve a school of nursing that is affiliated with an institution of higher education, and that is subject to the requirements set forth in the California Private Postsecondary Education Act of 2009, to grant nursing degrees.

The bill would require the board to have a memorandum of understanding with the Bureau for Private Postsecondary Education to ensure that institutions approved by the bureau shall not be required to pay an additional application fee to the bureau for the addition of a school of nursing approved by the board, and to delineate the powers of the board and bureau, as specified.

The bill would require the board to notify the Bureau for Private Postsecondary Education and the Attorney General's office that the school is offering students the ability to enroll in a nursing program that does not have the approval of the board. of such a school that is being conducted without board approval.

Amended analysis of 6/21/12:

The bill deletes the requirement for the board to have a memorandum of understanding with the Bureau for Private Postsecondary Education to ensure that institutions approved by the bureau shall not be required to pay an additional application fee to the bureau for the addition of a school of nursing approved by the board.

Amended analysis of 7/2/12:

This bill deletes provisions that apply to laws for the Medical Board of California. No substantive change related to nursing.

BOARD POSITION:

LEGISLATIVE COMMITTEE RECOMMENDED POSITION:

SUPPORT: California School Nurse Organization as noted in the Analysis 6/19/12

OPPOSE: None noted

AMENDED IN ASSEMBLY JULY 2, 2012
AMENDED IN ASSEMBLY JUNE 21, 2012
AMENDED IN ASSEMBLY JUNE 12, 2012
AMENDED IN SENATE JANUARY 10, 2012
AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 122

Introduced by Senator Price

January 24, 2011

An act to amend Sections 2709, 2786, 2798, 4600, 4601, 4602, 4602.5, 4603, 4603.7, 4612, and 4613 of, and to add Sections 2135.7, 2786.2, 2786.5, and 4603.8 to, the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Price. Healing Arts.

~~(1) Existing law provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires the board to issue a license to an applicant who meets specified qualifications and requirements, including successfully completing a medical curriculum, as specified, in a medical school or schools located in the United States or Canada approved by the board, or in a medical school located outside the United States or Canada which otherwise meets specified requirements. Existing law requires the board to issue a license to an applicant who, among other things, (A) holds an unlimited license as a physician and surgeon in another state or states or a Canadian province or provinces, (B) has held an unrestricted license to practice medicine for at least 4 years, (C) has passed a written~~

examination recognized by the board to be equivalent in context to that administered in California, (D) the board has determined has (i) not had disciplinary action taken against him or her, (ii) not been the subject of an adverse judgment or settlement, and (iii) has not committed any acts or crimes constituting grounds for denial of a certificate, in each case, as specified, (E) has completed specified post graduate training, and (F) is board certified in a specialty, as specified.

This bill would authorize the board to issue a physician and surgeon license to an applicant who successfully completed a medical curriculum in a medical school that is not approved or recognized by the board or that has been disapproved by the board, if the applicant meets the above requirements, except that the applicant shall have held an unrestricted physician and surgeon license in another state or country for a minimum of 5, rather than 4, years.

(2)

(1) Existing law creates within the Department of Consumer Affairs the Board of Registered Nursing, and makes the board responsible for the licensure and regulation of registered nurses. Existing law requires the board to meet quarterly.

This bill would require meetings of the board to be held in northern and southern California.

(3)

(2) Existing law defines the term “approved school of nursing” and requires the board to approve and regulate registered nursing schools that are institutions of higher education or are affiliated with an institution of higher education, as specified. Existing law requires a school of nursing that is not affiliated with an institution of higher education to make an agreement with such an institution for purposes of awarding nursing degrees.

This bill would delete the provisions requiring an agreement and would instead allow the board to approve a school of nursing that is affiliated with an institution of higher education, and that is subject to the requirements set forth in the California Private Postsecondary Education Act of 2009 to grant nursing degrees. The bill would specify that the term “approved school of nursing” includes an approved nursing program. The bill would subject all approved schools of nursing to specified fees for deposit into the Board of Registered Nursing Fund, a continuously appropriated fund. Because the bill adds a new source of revenue to a continuously appropriated fund, the bill would make an appropriation.

The bill would require the board to have a memorandum of understanding with the Bureau for Private Postsecondary Education to delineate the powers of the board and bureau, as specified.

(4)

(3) Existing law provides that it is unlawful for anyone to conduct a school of nursing unless the school has been approved by the board.

This bill would authorize the board to issue cease and desist orders to a school of nursing that is not approved by the board and would require the board to notify the Bureau for Private Postsecondary Education and the office of the Attorney General of such a school. The bill would also provide that it is unprofessional conduct for any registered nurse to violate that provision.

(5)

(4) Existing law, until January 1, 2015, provides for the voluntary certification of massage practitioners and massage therapists by the California Massage Therapy Council. Existing law specifies the requirements for the council to issue to an applicant a certificate as a massage therapist, including, but not limited to, (A) successfully completing curricula in massage and related subjects totaling a minimum of 500 hours, a minimum of 250 hours of which shall be from a school approved by the council and the other 250 hours may be secured as specified, or (B) passing a massage and bodywork competency assessment examination, as specified.

This bill would require an applicant for a massage therapist certificate to meet the other requirements for certification and to also successfully complete either (A) the 500 hours or the credit unit equivalent, as specified above, or (B) the competency assessment examination, as specified above, and curricula in massage and related subjects totaling a minimum of 250 hours, at a single approved school.

(6)

(5) Existing law requires the council to immediately suspend, on an interim basis, the certificate of a certificate holder, if the council receives notice that a certificate holder has been arrested for and charged with, among other crimes, soliciting or engaging in an act of prostitution or an act punishable as sexually related crime, and to provide notices of the suspension to the certificate holder and any business that employs the certificate holder, in each case, as specified.

This bill would, additionally, require the council to immediately suspend the certificate of a certificate holder upon receipt of clear and convincing evidence that the holder has committed an act punishable

as a sexually related crime or felony. The bill would also require the council to consider any available credible mitigating evidence before making a decision to so suspend a certificate. The bill would grant the holder of a certificate so suspended the right to a hearing to be held within 30 days, and require the council to send notice of suspension to the certificate holder and to other specified businesses.

(7)

(6) Existing law requires the council, upon request of a law enforcement agency or local government agency with responsibility for regulating massage or massage business, to provide information concerning a certificate holder, as specified.

This bill would authorize those local agencies, upon request of the council, to provide information to the council concerning an applicant or certificate holder, including, but not limited to, information related to criminal activity or unprofessional conduct allegedly engaged in by that person.

(8)

(7) Under existing law, conviction of a felony that is substantially related to the qualifications or duties of a certificate holder is a violation and basis for the council to deny an application or discipline a certificate holder.

This bill would also impose those consequences for a conviction of a felony, misdemeanor, infraction, or municipal code violation, or liability in an administrative or civil action, that is substantially related to the qualifications, functions, or duties of a certificate holder. The bill would also require a certificate holder to provide identifying information, upon request, as specified.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 2135.7 is added to the Business and~~
- 2 ~~Professions Code, to read:~~
- 3 ~~2135.7. The board may issue a physician and surgeon's~~
- 4 ~~certificate to an applicant who meets all of the following~~
- 5 ~~requirements:~~
- 6 ~~(a) The applicant holds an unlimited license as a physician and~~
- 7 ~~surgeon in another state or states, or another country or countries,~~
- 8 ~~which was issued upon both of the following:~~

1 ~~(1) Successful completion of a resident course of professional~~
2 ~~instruction leading to a degree of medical doctor equivalent to that~~
3 ~~specified in Section 2089, except that the applicant may have~~
4 ~~successfully completed the degree program at a medical school~~
5 ~~that is not approved or recognized by the board or a medical school~~
6 ~~that has been disapproved by the board pursuant to Article 4~~
7 ~~(commencing with Section 2080). However, nothing in this section~~
8 ~~shall be construed to require the board to evaluate for equivalency~~
9 ~~any coursework obtained at a medical school disapproved by the~~
10 ~~board.~~

11 ~~(2) Taking and passing a written examination that is recognized~~
12 ~~by the board to be equivalent in content to that administered in~~
13 ~~California.~~

14 ~~(b) The applicant has held an unrestricted license to practice~~
15 ~~medicine in another state or states, or another country or countries,~~
16 ~~or as a member of the active military, United States Public Health~~
17 ~~Services, or other federal program, for a period of at least five~~
18 ~~years. Any time spent by the applicant in a postgraduate training~~
19 ~~program or clinical fellowship shall not be included in the~~
20 ~~calculation of this five-year period.~~

21 ~~(c) The board determines that no disciplinary action has been~~
22 ~~taken against the applicant by any medical licensing authority and~~
23 ~~that the applicant has not been the subject of adverse judgments~~
24 ~~or settlements resulting from the practice of medicine that the~~
25 ~~board determines constitutes evidence of a pattern of negligence~~
26 ~~or incompetence.~~

27 ~~(d) The applicant (1) has satisfactorily completed at least one~~
28 ~~year of approved postgraduate training and is certified by a~~
29 ~~specialty board approved by the American Board of Medical~~
30 ~~Specialties or approved by the board pursuant to subdivision (h)~~
31 ~~of Section 651; (2) has satisfactorily completed at least two years~~
32 ~~of approved postgraduate training; or (3) has satisfactorily~~
33 ~~completed at least one year of approved postgraduate training and~~
34 ~~takes and passes the clinical competency written examination.~~

35 ~~(e) The applicant has not committed any acts or crimes~~
36 ~~constituting grounds for denial of a certificate under Division 1.5~~
37 ~~(commencing with Section 475) or Article 12 (commencing with~~
38 ~~Section 2220).~~

39 ~~(f) Any application received from an applicant who has held an~~
40 ~~unrestricted license to practice medicine in another state or states;~~

1 ~~or another country or countries, or as a member of the active~~
2 ~~military, United States Public Health Services, or other federal~~
3 ~~program for five or more years shall be reviewed and processed~~
4 ~~pursuant to this section. Any time spent by the applicant in a~~
5 ~~postgraduate training program or clinical fellowship shall not be~~
6 ~~included in the calculation of this five-year period. This subdivision~~
7 ~~does not apply to applications that may be reviewed and processed~~
8 ~~pursuant to Section 2151.~~

9 ~~SEC. 2.~~

10 *SECTION 1.* Section 2709 of the Business and Professions
11 Code is amended to read:

12 2709. The board for the purpose of transacting its business
13 shall meet at least once every three months, at times and places it
14 designates by resolution. Meetings shall be held in northern and
15 southern California.

16 ~~SEC. 3.~~

17 *SEC. 2.* Section 2786 of the Business and Professions Code is
18 amended to read:

19 2786. (a) An approved school of nursing, or an approved
20 nursing program, is one that has been approved by the board, gives
21 the course of instruction approved by the board, covering not less
22 than two academic years, is affiliated or conducted in connection
23 with one or more hospitals, and is an institution of higher
24 education. For purposes of this section, "institution of higher
25 education" includes, but is not limited to, community colleges
26 offering an associate of arts or associate of science degree and
27 private postsecondary institutions offering an associate of arts,
28 associate of science, or baccalaureate degree or an entry-level
29 master's degree, and is an institution that is not subject to the
30 California Private Postsecondary Education Act of 2009 (Chapter
31 8 (commencing with Section 94800) of Part 59 of Division 10 of
32 Title 3 of the Education Code).

33 (b) A school of nursing that is affiliated with an institution that
34 is subject to the California Private Postsecondary Education Act
35 of 2009 (Chapter 8 (commencing with Section 94800) of Part 59
36 of Division 10 of Title 3 of the Education Code), may be approved
37 by the board to grant an associate of arts or associate of science
38 degree to individuals who graduate from the school of nursing or
39 to grant a baccalaureate degree in nursing with successful

1 completion of an additional course of study as approved by the
2 board and the institution involved.

3 (c) The board shall determine by regulation the required subjects
4 of instruction to be completed in an approved school of nursing
5 for licensure as a registered nurse and shall include the minimum
6 units of theory and clinical experience necessary to achieve
7 essential clinical competency at the entry level of the registered
8 nurse. The board's standards shall be designed to require all schools
9 to provide clinical instruction in all phases of the educational
10 process.

11 (d) The board shall perform or cause to be performed an analysis
12 of the practice of the registered nurse no less than every five years.
13 Results of the analysis shall be utilized to assist in the
14 determination of the required subjects of instruction, validation of
15 the licensing examination, and assessment of the current practice
16 of nursing.

17 ~~SEC. 4.~~

18 *SEC. 3.* Section 2786.2 is added to the Business and Professions
19 Code, to read:

20 2786.2. A private postsecondary school of nursing approved
21 by the board pursuant to subdivision (b) of Section 2786 shall
22 comply with Chapter 8 of Part 59 of Division 10 of Title 3 of the
23 Education Code. The board shall have a memorandum of
24 understanding with the Bureau for Private Postsecondary Education
25 to delineate the powers of the board to review and approve schools
26 of nursing and the powers of the bureau to protect the interest of
27 students attending institutions governed by the Private
28 Postsecondary Education Act of 2009, Chapter 8 (commencing
29 with Section 94800) of Division 10 of Title 3 of the Education
30 Code.

31 ~~SEC. 5.~~

32 *SEC. 4.* Section 2786.5 is added to the Business and Professions
33 Code, to read:

34 2786.5. (a) An institution of higher education or a private
35 postsecondary school of nursing approved by the board pursuant
36 to subdivision (b) of Section 2786 shall remit to the board for
37 deposit in the Board of Registered Nursing Fund the following
38 fees, in accordance with the following schedule:

39 (1) The fee for approval of a school of nursing shall be five
40 thousand dollars (\$5,000).

1 (2) The fee for continuing approval of a nursing program
2 established after January 1, 2013, shall be three thousand five
3 hundred dollars (\$3,500).

4 (3) The processing fee for authorization of a substantive change
5 to an approval of a school of nursing shall be five hundred dollars
6 (\$500).

7 (b) If the board determines that the annual cost of providing
8 oversight and review of a school of nursing, as required by this
9 article, is less than the amount of any fees required to be paid by
10 that institution pursuant to this article, the board may decrease the
11 fees applicable to that institution to an amount that is proportional
12 to the board's costs associated with that institution.

13 ~~SEC. 6.~~

14 *SEC. 5.* Section 2798 of the Business and Professions Code is
15 amended to read:

16 2798. (a) It is unlawful for anyone to conduct a school of
17 nursing unless the school has been approved by the board.

18 (b) If the board has a reasonable belief, either by complaint or
19 otherwise, that a school is allowing students to apply for its nursing
20 program and that nursing program does not have the approval of
21 the board, the board shall immediately order the school to cease
22 and desist from offering students the ability to enroll in its nursing
23 program. The board shall also notify the Bureau for Private
24 Postsecondary Education and the Attorney General's office that
25 the school is offering students the ability to enroll in a nursing
26 program that does not have the approval of the board.

27 (c) It shall be unprofessional conduct for any registered nurse
28 to violate or attempt to violate, either directly or indirectly, or to
29 assist or abet the violation of, this section.

30 (d) This section is not applicable to schools conducted under
31 Section 2789 of this chapter.

32 ~~SEC. 7.~~

33 *SEC. 6.* Section 4600 of the Business and Professions Code is
34 amended to read:

35 4600. As used in this chapter, the following terms shall have
36 the following meanings:

37 (a) "Approved school" or "approved massage school" means a
38 school approved by the council that meets minimum standards for
39 training and curriculum in massage and related subjects and that
40 meets any of the following requirements:

1 (1) Is approved by the Bureau for Private Postsecondary
2 Education.

3 (2) Is approved by the Department of Consumer Affairs.

4 (3) Is an institution accredited by the Accrediting Commission
5 for Senior Colleges and Universities or the Accrediting
6 Commission for Community and Junior Colleges of the Western
7 Association of Schools and Colleges and that is one of the
8 following:

9 (A) A public institution.

10 (B) An institution incorporated and lawfully operating as a
11 nonprofit public benefit corporation pursuant to Part 2
12 (commencing with Section 5110) of Division 2 of Title 1 of the
13 Corporations Code, and that is not managed by any entity for profit.

14 (C) A for-profit institution.

15 (D) An institution that does not meet all of the criteria in
16 subparagraph (B) that is incorporated and lawfully operating as a
17 nonprofit public benefit corporation pursuant to Part 2
18 (commencing with Section 5110) of Division 2 of Title 1 of the
19 Corporations Code, that has been in continuous operation since
20 April 15, 1997, and that is not managed by any entity for profit.

21 (4) Is a college or university of the state higher education system,
22 as defined in Section 100850 of the Education Code.

23 (5) Is a school of equal or greater training that is recognized by
24 the corresponding agency in another state or accredited by an
25 agency recognized by the United States Department of Education.

26 (b) "Compensation" means the payment, loan, advance,
27 donation, contribution, deposit, or gift of money or anything of
28 value.

29 (c) "Massage therapist," "bodyworker," "bodywork therapist,"
30 or "massage and bodywork therapist" means a person who is
31 certified by the California Massage Therapy Council under
32 subdivision (c) of Section 4601 and who administers massage for
33 compensation.

34 (d) "Massage practitioner," "bodywork practitioner," or
35 "massage and bodywork practitioner" means a person who is
36 certified by the California Massage Therapy Council under
37 subdivision (b) of Section 4601 and who administers massage for
38 compensation.

39 (e) "Council" means the California Massage Therapy Council
40 created pursuant to this chapter, which shall be a nonprofit

1 organization exempt from taxation under Section 501(c)(3) of Title
2 26 of the United States Code. The council may commence activities
3 as authorized by this section once it has submitted a request to the
4 Internal Revenue Service seeking this exemption. Whenever the
5 term "organization" is used in this chapter, it shall mean the
6 council, except where the context indicates otherwise.

7 (f) "Registered school" means a school approved by the council
8 that meets minimum standards for training and curriculum in
9 massage and related subjects and that either is approved by the
10 Bureau for Private Postsecondary Education or the Department of
11 Consumer Affairs, or is an institution accredited by the senior
12 commission or the junior commission of the Western Association
13 of Schools and Colleges as defined in paragraph (3) of subdivision
14 (a), is a college or university of the state higher education system
15 as defined in Section 100850 of the Education Code, or is a school
16 of equal or greater training that is approved by the corresponding
17 agency in another state.

18 (g) For purposes of this chapter, the terms "massage" and
19 "bodywork" shall have the same meaning.

20 (h) "Operator of a massage business" means a person, whether
21 owner or nonowner, who manages or operates a massage business.

22 ~~SEC. 8.~~

23 *SEC. 7.* Section 4601 of the Business and Professions Code is
24 amended to read:

25 4601. (a) The council shall issue a certificate under this chapter
26 to an applicant who satisfies the requirements of this chapter.

27 (b) (1) In order to obtain certification as a massage practitioner,
28 an applicant shall submit a written application and provide the
29 council with satisfactory evidence that he or she meets all of the
30 following requirements:

31 (A) The applicant is 18 years of age or older.

32 (B) The applicant has successfully completed, at a single
33 approved school, curricula in massage and related subjects, totaling
34 a minimum of 250 hours or the credit unit equivalent, that
35 incorporates appropriate school assessment of student knowledge
36 and skills. Included in the hours shall be instruction addressing
37 anatomy and physiology, contraindications, health and hygiene,
38 and business and ethics, with at least 100 hours of the required
39 minimum 250 hours devoted to these curriculum areas.

40 (C) All fees required by the council have been paid.

(2) New certificates shall not be issued pursuant to this subdivision after December 31, 2015. Certificates issued pursuant to this section or subdivision (a) or (c) of Section 4604 on or before December 31, 2015, shall, after December 31, 2015, be renewed without any additional educational requirements, provided that the certificate holder continues to be qualified pursuant to this chapter.

(c) In order to obtain certification as a massage therapist, an applicant shall submit a written application and provide the council with satisfactory evidence that he or she meets all of the following requirements:

(1) The applicant is 18 years of age or older.

(2) The applicant satisfies at least one of the following requirements:

(A) He or she has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours or the credit unit equivalent. Of this 500 hours, a minimum of 250 hours shall be from approved schools. The remaining 250 hours required may be secured either from approved or registered schools, or from continuing education providers approved by, or registered with, the council or the Department of Consumer Affairs. After December 31, 2015, applicants may only satisfy the curricula in massage and related subjects from approved schools.

(B) The applicant has done both of the following:

(i) Successfully completed, at a single approved school, curricula in massage and related subjects totaling a minimum of 250 hours that incorporates appropriate school assessment of student knowledge and skills. Included in the hours shall be instruction addressing anatomy and physiology, contraindications, health and hygiene, and business and ethics, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.

(ii) Passed a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards, and that is approved by the board. The successful completion of this examination may have been accomplished before the date the council is authorized by this chapter to begin issuing certificates.

(3) All fees required by the council have been paid.

(d) The council shall issue a certificate to an applicant who meets the other qualifications of this chapter and holds a current and valid registration, certification, or license from any other state

1 whose licensure requirements meet or exceed those defined within
2 this chapter. The council shall have discretion to give credit for
3 comparable academic work completed by an applicant in a program
4 outside of California.

5 (e) An applicant applying for a massage therapist certificate
6 shall file with the council a written application provided by the
7 council, showing to the satisfaction of the council that he or she
8 meets all of the requirements of this chapter.

9 (f) Any certification issued under this chapter shall be subject
10 to renewal every two years in a manner prescribed by the council,
11 and shall expire unless renewed in that manner. The council may
12 provide for the late renewal of a license.

13 (g) (1) The council shall have the responsibility to determine
14 that the school or schools from which an applicant has obtained
15 the education required by this chapter meet the requirements of
16 this chapter. If the council has any reason to question whether or
17 not the applicant received the education that is required by this
18 chapter from the school or schools that the applicant is claiming,
19 the council shall investigate the facts to determine that the applicant
20 received the required education prior to issuing a certificate.

21 (2) For purposes of paragraph (1) and any other provision of
22 this chapter for which the council is authorized to receive factual
23 information as a condition of taking any action, the council shall
24 have the authority to conduct oral interviews of the applicant and
25 others or to make any investigation deemed necessary to establish
26 that the information received is accurate and satisfies any criteria
27 established by this chapter.

28 (h) The certificate issued pursuant to this chapter, as well as
29 any identification card issued by the council, shall be surrendered
30 to the council by any certificate holder whose certificate has been
31 suspended or revoked.

32 ~~SEC. 9.~~

33 *SEC. 8.* Section 4602 of the Business and Professions Code is
34 amended to read:

35 4602. (a) The council may discipline a certificate holder by
36 any, or a combination, of the following methods:

37 (1) Placing the certificate holder on probation.

38 (2) Suspending the certificate and the rights conferred by this
39 chapter on a certificate holder for a period not to exceed one year.

40 (3) Revoking the certificate.

1 (4) Suspending or staying the disciplinary order, or portions of
2 it, with or without conditions.

3 (5) Taking other action as the council, as authorized by this
4 chapter or its bylaws, deems proper.

5 (b) The council may issue an initial certificate on probation,
6 with specific terms and conditions, to any applicant.

7 (c) (1) Notwithstanding any other provision of law, if the
8 council receives notice that a certificate holder has been arrested
9 and charges have been filed by the appropriate prosecuting agency
10 against the certificate holder alleging a violation of subdivision
11 (b) of Section 647 of the Penal Code or any other offense described
12 in subdivision (h) of Section 4603, the council shall take all of the
13 following actions:

14 (A) Immediately suspend, on an interim basis, the certificate of
15 that certificate holder.

16 (B) Notify the certificate holder within 10 days at the address
17 last filed with the council that the certificate has been suspended,
18 and the reason for the suspension.

19 (C) Notify any business within 10 days that the council has in
20 its records as employing the certificate holder that the certificate
21 has been suspended.

22 (2) Upon notice to the council that the charges described in
23 paragraph (1) have resulted in a conviction, the suspended
24 certificate shall become subject to permanent revocation. The
25 council shall provide notice to the certificate holder within 10 days
26 that it has evidence of a valid record of conviction and that the
27 certificate will be revoked unless the certificate holder provides
28 evidence within 15 days that the conviction is either invalid or that
29 the information is otherwise erroneous.

30 (3) Upon notice that the charges have resulted in an acquittal,
31 or have otherwise been dismissed prior to conviction, the certificate
32 shall be immediately reinstated and the certificate holder and any
33 business that received notice pursuant to subparagraph (C) of
34 paragraph (1) shall be notified of the reinstatement within 10 days.

35 (d) Notwithstanding any other provision of law, if the council
36 receives clear and convincing evidence that a certificate holder
37 has committed an act punishable as a sexually related crime or a
38 felony, the council may immediately suspend the certificate of that
39 certificate holder. A decision to immediately suspend a certificate
40 pursuant to this subdivision shall be based on clear and convincing

1 evidence and the council shall also consider any available credible
2 mitigating evidence before making a decision to suspend a
3 certificate. Written statements by any person shall not be
4 considered by the council when determining whether to
5 immediately suspend a certificate unless made under penalty of
6 perjury. If the council suspends the certificate of a certificate holder
7 in accordance with this subdivision, the council shall take all of
8 the following additional actions:

9 (1) Notify the certificate holder, at the address last filed with
10 the council, within 10 business days by a method providing
11 delivery confirmation, that the certificate has been suspended, the
12 reason for the suspension, and that the certificate holder has the
13 right to request a hearing pursuant to paragraph (3).

14 (2) Notify by electronic mail or any other means consistent with
15 the notice requirements of this chapter, within 10 business days,
16 any business that the council has in its records as employing or
17 contracting with the certificate holder for massage services, and
18 the California city or county permitting authority that has
19 jurisdiction over any business that the council has in its records as
20 employing or contracting with the certificate holder, that the
21 certificate has been suspended.

22 (3) A certificate holder whose certificate is suspended pursuant
23 to this subdivision shall have the right to request, in writing, a
24 hearing to challenge the factual basis for the suspension. If the
25 holder of the suspended certificate requests a hearing on the
26 suspension, the hearing shall be held within 30 days after receipt
27 of the request. A holder whose certificate is suspended based on
28 paragraph (1) shall be subject to revocation or other discipline in
29 accordance with subdivision (a) of Section 4602.

30 ~~SEC. 10.~~

31 *SEC. 9.* Section 4602.5 of the Business and Professions Code
32 is amended to read:

33 4602.5. (a) Upon the request of any law enforcement agency
34 or any other representative of a local government agency with
35 responsibility for regulating, or administering a local ordinance
36 relating to, massage or massage businesses, the council shall
37 provide information concerning a certificate holder, including, but
38 not limited to, the current status of the certificate, any history of
39 disciplinary actions taken against the certificate holder, the home
40 and work addresses of the certificate holder, and any other

1 information in the council's possession that is necessary to verify
2 facts relevant to administering the local ordinance.

3 (b) Upon the request of the council to any law enforcement
4 agency or any other representative of a local government agency
5 with responsibility for regulating or administering a local ordinance
6 relating to massage or massage businesses, the law enforcement
7 agency or local government agency is authorized to provide
8 information to the council concerning a certificate applicant or
9 certificate holder, including, but not limited to, the current status
10 of any application or local permit; any history of disciplinary action
11 taken against the certificate applicant or certificate holder; any
12 information related to criminal activity or unprofessional conduct
13 allegedly engaged in by a certificate applicant or certificate holder,
14 including, but not limited to, police reports and declarations of
15 conduct; the home and work addresses of the certificate applicant
16 or certificate holder; and any other information in the law
17 enforcement agency's or other local government agency's
18 possession that is necessary to verify facts or implement the
19 provisions of this chapter.

20 (c) The council shall accept information provided by any law
21 enforcement agency or any other representative of a local
22 government agency with responsibility for regulating, or
23 administering a local ordinance relating to, massage or massage
24 businesses. The council shall have the responsibility to review any
25 information received and to take any actions authorized by this
26 chapter that are warranted by that information.

27 ~~SEC. 11.~~

28 *SEC. 10.* Section 4603 of the Business and Professions Code
29 is amended to read:

30 4603. It is a violation of this chapter for a certificate holder to
31 commit, and the council may deny an application for a certificate
32 or discipline a certificate holder for, any of the following:

33 (a) Unprofessional conduct, including, but not limited to, denial
34 of licensure, revocation, suspension, restriction, or any other
35 disciplinary action against a certificate holder by another state or
36 territory of the United States, by any other government agency, or
37 by another California health care professional licensing board. A
38 certified copy of the decision, order, or judgment shall be
39 conclusive evidence of these actions.

1 (b) Procuring a certificate by fraud, misrepresentation, or
2 mistake.

3 (c) Violating or attempting to violate, directly or indirectly, or
4 assisting in or abetting the violation of, or conspiring to violate,
5 any provision or term of this chapter or any rule or bylaw adopted
6 by the council.

7 (d) Conviction of any felony, misdemeanor, infraction, or
8 municipal code violation, or liability in an administrative or civil
9 action, that is substantially related to the qualifications, functions,
10 or duties of a certificate holder, in which event the record of the
11 conviction or other judgment shall be conclusive evidence of the
12 crime or liability.

13 (e) Impersonating an applicant or acting as a proxy for an
14 applicant in any examination referred to under this chapter for the
15 issuance of a certificate.

16 (f) Impersonating a certified practitioner or therapist, or
17 permitting or allowing an uncertified person to use a certificate.

18 (g) Committing any fraudulent, dishonest, or corrupt act that is
19 substantially related to the qualifications or duties of a certificate
20 holder.

21 (h) Committing any act punishable as a sexually related crime.

22 ~~SEC. 12.~~

23 *SEC. 11.* Section 4603.7 of the Business and Professions Code
24 is amended to read:

25 4603.7. A certificate holder shall include the name under which
26 he or she is certified and his or her certificate number in any and
27 all advertising and shall display his or her original certificate at
28 his or her place of business. A certificate holder shall have his or
29 her identification card in his or her possession while providing
30 massage services.

31 ~~SEC. 13.~~

32 *SEC. 12.* Section 4603.8 is added to the Business and
33 Professions Code, to read:

34 4603.8. A certificate holder shall, upon request at the location
35 where he or she is providing massage services, provide his or her
36 full name and certificate number to a member of the public, the
37 council, or a member of law enforcement or a local government
38 agency charged with regulating massage.

1 ~~SEC. 14.~~

2 *SEC. 13.* Section 4612 of the Business and Professions Code
3 is amended to read:

4 4612. (a) (1) The holder of a certificate issued pursuant to
5 this chapter shall have the right to practice massage, consistent
6 with this chapter and the qualifications established by his or her
7 certification, in any city, county, or city and county in this state
8 and shall not be required to obtain any other license, permit, or
9 other authorization, except as provided in this section, to engage
10 in that practice.

11 (2) Notwithstanding any other provision of law, a city, county,
12 or city and county shall not enact an ordinance that requires a
13 license, permit, or other authorization to provide massage for
14 compensation by an individual who is certified pursuant to this
15 chapter and who is practicing consistent with the qualifications
16 established by his or her certification, or by a massage business
17 or massage establishment that employs or uses only persons who
18 are certified pursuant to this chapter to provide massage for
19 compensation. No provision of any ordinance enacted by a city,
20 county, or city and county that is in effect before the effective date
21 of this chapter, and that requires a license, permit, or other
22 authorization to provide massage for compensation, may be
23 enforced against an individual who is certified pursuant to this
24 chapter or against a massage business or massage establishment
25 that employs or uses only persons who are certified pursuant to
26 this chapter to provide massage for compensation.

27 (3) Except as provided in subdivision (b), nothing in this section
28 shall be interpreted to prevent a city, county, or city and county
29 from adopting or enforcing any local ordinance that provides for
30 reasonable health and safety requirements for massage
31 establishments or businesses. Subdivision (b) shall not apply to
32 any massage establishment or business that employs or uses
33 persons to provide massage services who are not certified pursuant
34 to this chapter.

35 (b) (1) This subdivision shall apply only to massage
36 establishments or businesses that are sole proprietorships, where
37 the sole proprietor is certified pursuant to this chapter, and to
38 massage establishments or businesses that employ or use only
39 persons certified pursuant to this chapter to provide massage
40 services. For purposes of this subdivision, a sole proprietorship is

1 a business where the owner is the only person employed by that
2 business to provide massage services.

3 (2) (A) Any massage establishment or business described in
4 paragraph (1) shall maintain on its premises evidence for review
5 by local authorities that demonstrates that all persons providing
6 massage services are certified.

7 (B) Nothing in this section shall preclude a city, county, or city
8 and county from including in a local ordinance a provision that
9 requires a business described in paragraph (1) to file copies or
10 provide other evidence of the certificates held by the persons who
11 are providing massage services at the business.

12 (3) A city, county, or city and county may charge a massage
13 business or establishment a business licensing fee, provided that
14 the fee shall be no higher than the lowest fee that is applied to
15 other individuals and businesses providing professional services,
16 as defined in subdivision (a) of Section 13401 of the Corporations
17 Code.

18 (4) Nothing in this section shall prohibit a city, county, or city
19 and county from enacting ordinances, regulations, rules,
20 requirements, restrictions, land use regulations, moratoria,
21 conditional use permits, or zoning requirements applicable to an
22 individual certified pursuant to this chapter or to a massage
23 establishment or business that uses only individuals who are
24 certified pursuant to this chapter to provide massage for
25 compensation, provided that, unless otherwise exempted by this
26 chapter, these ordinances, regulations, rules, requirements,
27 restrictions, land use regulations, moratoria, conditional use
28 permits, and zoning requirements shall be no different than the
29 requirements that are uniformly applied to all other individuals
30 and businesses providing professional services, as defined in
31 subdivision (a) of Section 13401 of the Corporations Code. No
32 provision of any ordinance, regulation, rule, requirement,
33 restriction, land use regulation, moratoria, conditional use permit,
34 or zoning requirement enacted by a city, county, or city and county
35 that is in effect before the effective date of this chapter, and that
36 is inconsistent with this paragraph, may be enforced against an
37 individual who is certified pursuant to this chapter or against a
38 massage business or massage establishment that uses only
39 individuals who are certified pursuant to this chapter to provide
40 massage for compensation.

1 (5) Local building code or physical facility requirements
2 applicable to massage establishments or businesses shall not require
3 additional restroom, shower, or other facilities that are not
4 uniformly applicable to other professional or personal service
5 businesses, nor shall building or facility requirements be adopted
6 that (A) require unlocked doors when there is no staff available to
7 ensure security for clients and massage staff who are behind closed
8 doors, or (B) require windows that provide a view into massage
9 rooms that interfere with the privacy of clients of the massage
10 business.

11 (6) A city, county, or city and county may adopt reasonable
12 health and safety requirements with respect to massage
13 establishments or businesses, including, but not limited to,
14 requirements for cleanliness of massage rooms, towels and linens,
15 and reasonable attire and personal hygiene requirements for persons
16 providing massage services, provided that nothing in this paragraph
17 shall be interpreted to authorize adoption of local ordinances that
18 impose additional qualifications, such as medical examinations,
19 background checks, or other criteria, upon any person certified
20 pursuant to this chapter.

21 (7) Nothing in this section shall preclude a city, county, or city
22 and county from doing any of the following:

23 (A) Requiring an applicant for a business license to operate a
24 massage business or establishment to fill out an application that
25 requests the applicant to provide relevant information, as long as
26 the information requested is the same as that required of other
27 individuals and professionals providing professional services as
28 defined in subdivision (a) of Section 13401 of the Corporations
29 Code.

30 (B) Making reasonable investigations into the information so
31 provided.

32 (C) Denying or restricting a business license if the applicant
33 has provided materially false information.

34 (c) An owner or operator of a massage business or establishment
35 who is certified pursuant to this chapter shall be responsible for
36 the conduct of all employees or independent contractors working
37 on the premises of the business. Failure to comply with this chapter
38 may result in revocation of the owner's or operator's certificate in
39 accordance with Section 4603. Nothing in this section shall
40 preclude a local ordinance from authorizing suspension, revocation,

1 or other restriction of a license or permit issued to a massage
2 establishment or business if violations of this chapter, or of the
3 local ordinance, occur on the business premises.

4 (d) Nothing in this section shall preclude a city, county, or city
5 and county from adopting a local ordinance that is applicable to
6 massage businesses or establishments described in paragraph (1)
7 of subdivision (b) and that does either of the following:

8 (1) Provides that duly authorized officials of the city, county,
9 or city and county have the right to conduct reasonable inspections,
10 during regular business hours, to ensure compliance with this
11 chapter, the local ordinance, or other applicable fire and health
12 and safety requirements.

13 (2) Requires an owner or operator to notify the city, county, or
14 city and county of any intention to rename, change management,
15 or convey the business to another person.

16 (e) Nothing in this chapter shall be construed to preclude a city,
17 county, or city and county from requiring a background check of
18 an owner or operator of a massage establishment who owns 5
19 percent or more of a massage business or massage establishment
20 and who is not certified pursuant to this chapter. The background
21 check may include, but is not limited to, a criminal background
22 check, including requiring submission of fingerprints for a state
23 and federal criminal background check, submission of an
24 application that requires the applicant to state information,
25 including, but not limited to, the applicant's business, occupation,
26 and employment history for the 10 years preceding the date of
27 application, the inclusive dates of same, and the name and address
28 of any massage business or other like establishment owned or
29 operated by any person who is subject to the background check
30 requirement of this subdivision. If a noncertified owner's or
31 operator's background check results in a finding that the city,
32 county, or city and county determines is relevant to owning or
33 operating a massage establishment, then the provisions of
34 subdivision (a) and (b) shall not apply to that establishment and
35 the city, county, or city and county may regulate that establishment
36 in any manner it deems proper that is in accordance with the law.

37 ~~SEC. 15.~~

38 *SEC. 14.* Section 4613 of the Business and Professions Code
39 is amended to read:

1 4613. (a) Nothing in this chapter shall restrict or limit in any
2 way the authority of a city, county, or city and county to adopt a
3 local ordinance governing any person who is not certified pursuant
4 to this chapter.

5 (b) Nothing in this chapter is intended to affect the practice
6 rights of any person licensed by the state to practice or perform
7 any functions or services pursuant to that license.

8 (c) Nothing in this chapter shall be construed to restrict or limit
9 in any way the authority of a city, county, or city and county to
10 adopt a local ordinance restricting the opening of a new massage
11 establishment in a location in which a massage establishment has
12 been closed due to criminal activity.